

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF TEXAS  
3                   HOUSTON DIVISION

4           UNITED STATES OF AMERICA         .     4:19-CR-00649-1  
5           VERSUS                                  .     HOUSTON, TEXAS  
6           GEORGE DANIEL MCGAVITT         .     MARCH 11, 2020  
7           . . . . .                                  .     11:26 A.M.

8  
9                   TRANSCRIPT OF REARRAIGNMENT  
10                  BEFORE THE HONORABLE GRAY H. MILLER  
11                  UNITED STATES DISTRICT JUDGE

12               \*\*\*\*\*

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19               General Order 94-15, United States District Court,  
20               Southern District of Texas.

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25

## **APPEARANCES**

## 4 FOR THE GOVERNMENT:

5 Kimberly Leo  
6 Assistant United States Attorney  
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Suite 2300  
Houston, Texas 77002

9 FOR THE DEFENDANT:

10 Lewis A. Thomas  
LEWIS THOMAS LAW PC  
11 14027 Memorial Drive  
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OFFICIAL COURT REPORTER:

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19 Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

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**PROCEEDINGS**

1                   THE COURT: Court calls Criminal Case 19-649, United  
2 States of America versus George Daniel McGavitt.

3                   MR. THOMAS: Lewis Thomas on behalf of Mr. McGavitt.  
4  
11:27               Good afternoon -- morning, Judge.

5                   THE COURT: Good morning.

6                   MS. LEO: Good morning, Your Honor. Kimberly Leo on  
7 behalf of the United States.

8                   THE COURT: Ms. Leo, good morning to you.

9  
11:27               Mr. McGavitt is present.

10                  Mr. McGavitt, it is my understanding that you  
11 wish to enter a plea of guilty to Counts One, Two and Three of  
12 the indictment that's pending against you. Is that right?

13                  THE DEFENDANT: Yes, sir.

14                  THE COURT: All right. Before I can accept a guilty  
15 plea from you, I have to ask you certain questions that you  
16 must answer under oath. I need to be sure that your plea is  
17 voluntary, entered into freely and without any coercion. I  
18 need to be sure that your plea is informed, entered with a  
19 clear understanding of the consequences of pleading guilty and  
20 with an understanding of all the legal rights that you give up  
21 when you plead guilty. I also need to be sure that there is a  
22 basis in fact for your plea. So to the extent that you can,  
23 would you please raise your right hand and be placed under  
24 oath.

11 : 28 1 (Defendant sworn)

2 THE COURT: All right. Thank you, sir.

3 Do you understand that you have now been placed  
4 under oath and that if you answer any of my questions falsely,  
5 those answers could later be used against you in another  
6 prosecution for perjury, that is for making a false statement  
7 under oath? Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: It is very important that you listen  
11 : 28 10 carefully to all of my questions and that you give me truthful  
11 answers to all of those questions. Will you do that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Tell me your full name, please.

14 THE DEFENDANT: George Daniel McGavitt.

15 THE COURT: How old are you?

16 THE DEFENDANT: Forty-six.

17 THE COURT: And how far in school did you go?

18 THE DEFENDANT: Ninth grade.

19 THE COURT: Obviously you are able to read and write  
11 : 29 20 the English language without any problems?

21 THE DEFENDANT: Uh-huh.

22 THE COURT: Have you ever been treated for mental  
23 illness or psychological problems of any kind?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Are you addicted to any drugs?

11 : 29           1 THE DEFENDANT: No, Your Honor.

2                 2 THE COURT: Are you sick today in any way that would  
3 prevent you from understanding what is happening here?

4                 4 THE DEFENDANT: No, sir.

11 : 29           5 THE COURT: Have you taken any medication, either  
6 over-the-counter medication or prescription medication, in the  
7 last few days or today?

8                 8 THE DEFENDANT: In the last couple days, yes, sir.

9                 9 THE COURT: What have you taken?

11 : 29           10 THE DEFENDANT: Benadryl.

11               11 THE COURT: Benadryl. Okay. Does that have any  
12 impact on your ability to comprehend and understand what is  
13 going on?

14               14 THE DEFENDANT: No, sir.

11 : 29           15 THE COURT: All right. Have you had any illegal drugs  
16 or alcohol in the last few days or today?

17               17 THE DEFENDANT: No, Your Honor.

18               18 THE COURT: Are you presently under the influence of  
19 any drug or alcohol?

11 : 30           20 THE DEFENDANT: No.

21               21 THE COURT: Have you had enough time to talk to your  
22 attorney in this case?

23               23 THE DEFENDANT: Yes, I have.

24               24 THE COURT: And are you satisfied with Mr. Thomas as  
25 your attorney?

11 : 30 1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you need to ask him any questions or  
3 get any advice from him before we go on?

4 THE DEFENDANT: No.

11 : 30 5 THE COURT: During the course of the hearing, if at  
6 any point you need to ask Mr. Thomas a question or get advice  
7 from him, you can do that before you answer my question. Do  
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Thomas, have you had enough time to  
11 investigate the law and the facts of your client's case?

12 MR. THOMAS: I have, Your Honor.

13 THE COURT: And are you satisfied that your client  
14 understands the charges against him and the range of punishment  
15 that he faces?

16 MR. THOMAS: Yes, he does.

17 THE COURT: Has your client been able to fully  
18 cooperate with you?

19 MR. THOMAS: Yes.

11 : 30 20 THE COURT: And in your opinion, is he mentally  
21 competent to enter a plea of guilty in this case?

22 MR. THOMAS: He is.

23 THE COURT: All right. Thank you.

24 The Court finds that the defendant knowingly,  
25 voluntarily, intelligently and with the advice of his attorney

11 : 30      1 seeks to enter a plea of guilty.

2                Now, Mr. McGavitt, before I can accept a plea of  
3 guilty, I need to make sure that you understand all the legal  
4 rights that you give up when you plead guilty.

11 : 31      5                So, first of all, you have the right, if you  
6 wish, to plead not guilty to these charges. And if you plead  
7 not guilty, then you're entitled to have a trial on these  
8 charges. Do you understand your right to have a trial?

9                THE DEFENDANT: Yes, sir.

11 : 31      10              THE COURT: All right. Now, if we had a trial, you  
11 would be tried by a jury of 12 citizens from this district, or  
12 by the judge without a jury, if everyone agreed to that. Do  
13 you understand that?

14              THE DEFENDANT: Yes.

11 : 31      15              THE COURT: You're entitled to be represented by an  
16 attorney on these charges, and Mr. Thomas has been appointed to  
17 represent Mr. McGavitt. Mr. Thomas has been appointed to  
18 represent you, and he is representing you without any charge to  
19 you.

11 : 31      20              If we had a trial, Mr. Thomas would be here, and  
21 he would represent you throughout the trial, also without any  
22 charge. Do you understand that?

23              THE DEFENDANT: Yes, Your Honor.

24              THE COURT: Now, at this trial, the burden would be on  
25 the United States to prove your guilt beyond a reasonable doubt

11 : 31       1 on each charge against you. You would have no burden to prove  
2 that you were innocent because under our system of justice, you  
3 are presumed to be innocent. Do you understand the presumption  
4 of innocence?

11 : 32       5             THE DEFENDANT: Yes, Your Honor.

11 : 32       6             THE COURT: Now, in order to prove your guilt beyond a  
7 reasonable doubt, the government would call witnesses, and they  
8 would appear and testify here in open court under oath. You  
9 and Mr. Thomas would see and hear all of these witnesses, and  
10 then he would be allowed to ask them questions on your behalf.  
11 Do you understand that?

12             THE DEFENDANT: Yes.

11 : 32       13             THE COURT: Now, you would have no obligation to  
14 present any evidence or to call any witnesses during this  
15 trial; however, you would have the right to do so if you wanted  
16 to. And that would include the right to subpoena witnesses;  
17 that is, to require them to come in to court and testify on  
18 your behalf. Do you understand that right?

19             THE DEFENDANT: Yes.

11 : 32       20             THE COURT: During this trial, you would also have the  
21 right to remain silent. You could testify on your own behalf  
22 if you wanted to, but you are under no obligation to, because  
23 no one can compel you to be a witness against yourself. And if  
24 you exercised your right to remain silent, it could not be held  
25 against you. In fact, you would have the right to have the

11 : 33      1     jury instructed that they could not use your silence as any  
2     evidence of your guilt in this case. Do you understand the  
3     right to remain silent?

4                 THE DEFENDANT: Yes.

11 : 33      5     THE COURT: Now, the fact that you chose to present  
6     evidence of any kind would never change the burden of proof at  
7     trial. The government would always have the burden of proving  
8     your guilt beyond a reasonable doubt on each charge against  
9     you. And at this trial, you could not be convicted unless  
11 : 33      10    every member of the jury found that you were guilty beyond a  
11    reasonable doubt on each charge against you. In other words,  
12    the verdict would have to be unanimous by all 12 members of the  
13    jury. Do you understand that?

14                 THE DEFENDANT: Yes, sir.

11 : 33      15    THE COURT: Now, if you plead guilty today, and I  
16    accept your plea, then your guilt is established, and you will  
17    not have a trial. Do you understand that?

18                 THE DEFENDANT: Yes.

19                 THE COURT: Also, by pleading guilty today, you are  
11 : 33      20    giving up the right to have the facts that are pleaded in the  
21    indictment or that affect your sentence proven to a jury or  
22    proven beyond a reasonable doubt. Do you understand that?

23                 THE DEFENDANT: Yes, sir.

24                 THE COURT: Also, by pleading guilty today, you are  
11 : 34      25    giving up the right to make a number of arguments later on to

11 : 34      1 try and get your conviction set aside or your sentence set  
2 aside or reduced, arguments that you could have made if you had  
3 gone to trial and been convicted, rather than pleading guilty.

4 Do you understand that?

11 : 34      5 THE DEFENDANT: Yes, sir.

6                6 THE COURT: For example, you could not come forward  
7 later and argue that there were defects in the way that you  
8 were investigated, arrested or prosecuted in order to challenge  
9 your conviction or your sentence. You would give up the right  
11 : 34      10 to claim that you were subjected to an illegal search and  
11 seizure, that you gave an unconstitutional confession or that  
12 your right to a speedy trial was violated. This is not a  
13 complete list, just a few examples, but I want you to  
14 understand that if you plead guilty today, and I accept your  
15 plea, that you will not be able to raise these or similar  
16 defenses later on to attack your conviction or your sentence.

17 Do you understand that?

18                18 THE DEFENDANT: I understand.

19                19 THE COURT: All right. Are you a citizen of the  
20 United States?

21                21 THE DEFENDANT: Yes.

22                22 THE COURT: All right. These are felony offenses, and  
23 if your plea is accepted, you will be convicted, and you may  
24 lose your rights to vote, to hold public office, to serve on a  
25 jury or to possess any kind of a firearm in the future. Do you

11 : 35 1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Also by pleading guilty to  
4 this offense, you will have to register as a sex offender with  
5 the proper state and/or local agency or agencies in any state  
6 where you reside, are employed, carry on a vocation or where  
7 you are a student, within 10 business days of your conviction  
8 being final. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Now, I assume that you have  
11 received a copy of the indictment that is pending against you.  
12 Is that correct?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: All right. Let's see. There are three  
15 counts in the indictment pending against you. Count One,  
16 coercion and enticement. Do you understand the charge against  
17 you in Count One of the indictment?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right. In order for you to be  
20 convicted of that offense, the government has to prove the  
21 following four things beyond a reasonable doubt.

22 MS. LEO: Your Honor, I apologize to interrupt the  
23 Court, but I believe that the sentence data sheet that we had  
24 submitted to the Court is incorrect in regards to those  
25 elements. And so I do have the proper elements. It lists out

1 that the underlying conviction would be for production of child  
2 pornography, but it is actually rape under the Arkansas Code  
3 Section 5-14-103, and that's in the fourth element. So it  
4 should read --

5 THE COURT: Why don't you recite -- the four elements  
6 that have to be proved beyond a reasonable doubt by the  
7 government for you to be convicted of coercion or enticement  
8 are the following.

9 MS. LEO: Yes, Your Honor. And I apologize.

10 The first element is that the defendant knowingly  
11 persuaded, induced, enticed, coerced or attempted to persuade,  
12 induce, entice or coerce an individual to engage in any sexual  
13 activity as charged. Second, that the defendant used the  
14 Internet and/or a cell phone to do so. Third, the defendant  
15 believed that such individual was less than 18 years of age.  
16 And, fourth, had the conduct occurred, the defendant could have  
17 been charged with the criminal offense of rape under the  
18 Arkansas Code Section 5-14-103.

19 THE COURT: All right. And the penalty is correct?

20 MS. LEO: Yes, Your Honor.

THE COURT: So if you are convicted of Count One, the  
penalty is not less than 10 years and up to a maximum of life  
in prison, plus a fine of \$250,000. Do you understand that's  
the maximum penalty?

25 THE DEFENDANT: Yes. I understand.

11 : 37           1 THE COURT: All right. And then there would be a  
2 period of supervised release which could go anywhere from five  
3 years to life on supervised release. Do you understand that?

4                 THE DEFENDANT: Yes, I do.

11 : 38           5 THE COURT: I will talk more about supervised release  
6 in a minute.

7                 There would also be a \$100 special assessment and  
8 a \$5,000 victim special assessment for that count. Do you  
9 understand that?

11 : 38           10 THE DEFENDANT: Yes, I do.

11                11 THE COURT: All right. Count Two charges you with  
12 production of child pornography. Do you understand that  
13 charge?

14                14 THE DEFENDANT: Yes, I understand that one.

11 : 38           15 THE COURT: The elements that have to be proved there  
16 by the government beyond a reasonable doubt are the following:  
17 That the defendant did employ, use, persuade, induce, entice or  
18 coerce a minor to engage in sexually explicit conduct. Number  
19 two, that you did this for the purpose of producing a visual  
20 depiction. Number three, that at the time the victim was, in  
21 fact, a minor and, four, that the defendant produced the visual  
22 depiction using materials that had been mailed, shipped or  
23 transported in or affecting interstate or foreign commerce by  
24 any means, including computer, or that the visual depiction was  
25 actually transported using any means or facility of interstate

11 : 39      1 or foreign commerce or in or affecting interstate or foreign  
2 commerce or mail.

11 : 39      3                  Those four things have to be proved beyond a  
4 reasonable doubt by the government for you to be convicted of  
5 the offense alleged in Count Two of the indictment. Do you  
6 understand that?

7                  THE DEFENDANT: Yes, I do.

11 : 39      8                  THE COURT: Now, the penalty for that is a term of  
9 imprisonment of at least 15 years up to a maximum of 30 years  
10 in federal prison and a fine of up to \$250,000. Do you  
11 understand that?

12                  THE DEFENDANT: Yes, I do.

11 : 39      13                  THE COURT: There would also be a period of supervised  
14 release on that charge of at least five years up to life on  
15 supervised release. Do you understand that?

16                  THE DEFENDANT: Yes, I do.

17                  THE COURT: All right. Now, with respect to Count  
18 Three of the indictment, you're charged with possession of  
19 child pornography. Do you understand that charge?

11 : 39      20                  THE DEFENDANT: Yes, I do.

21                  THE COURT: All right. Now, in this case, the  
22 government has to prove the following three elements beyond a  
23 reasonable doubt for you to be convicted of that offense.  
24 Number one, that you knowingly possessed materials that  
25 contained child pornography, and, two, the materials were

11 : 40       1 mailed, shipped or transported in interstate or foreign  
2 commerce by computer or any other means, or they were produced  
3 using materials that had been mailed, shipped or transported in  
4 interstate or foreign commerce, and, number three, that when  
5 you possessed the material, you knew that the material was or  
6 contained child pornography.

7               Those three things have to be proved beyond a  
8 reasonable doubt for you to be convicted of the offense alleged  
9 in Count Three of the indictment. Do you understand that?

11 : 40       10 THE DEFENDANT: Yes, I do.

11              11 THE COURT: All right. Now the penalty for that is a  
12 term of imprisonment of not more than 10 years and a fine of up  
13 to \$250,000. That also carries the possibility of a \$5,000  
14 special assessment for the victims of sex trafficking and a  
15 \$100 special assessment to be paid to the Court. Do you  
16 understand that?

17              17 THE DEFENDANT: Yes, I do.

18              18 THE COURT: Again, the term of supervision is at least  
19 five years up to life in prison -- I mean, life on supervised  
20 release. Do you understand that?

21              21 THE DEFENDANT: Yes, I do.

22              22 THE COURT: All right. Now, with respect to  
23 supervised release, supervised release is what happens after  
24 you are released from prison, and supervised release has  
25 certain conditions that you must comply with. If you fail to

11 : 41      1 comply with the conditions of your supervised release, then I  
2 can revoke your supervised release and send you back to federal  
3 prison without any credit for the time that you already served  
4 on supervised release before you committed the violation. Do  
5 you understand that?

11 : 41      6                THE DEFENDANT: Yes, I do.

11 : 41      7                THE COURT: If you violate the conditions and I revoke  
8 your supervised release, I can impose another term of  
9 supervised release after you serve the prison time on the  
10 supervised release violation. If you commit another crime  
11 while you are on supervised release, you may be sentenced to  
12 additional years in prison and other punishment, depending upon  
13 what the crime is. And I can run the jail time that I give you  
14 on the supervised release violation in addition to, and not  
11 : 42      15 concurrently, with the jail time on the new charge. Do you  
16 understand that?

17                THE DEFENDANT: Yes, I do.

18                THE COURT: All right. Finally, there is no parole in  
19 the federal prison system and any prison sentence that you  
20 receive in this case will not be shortened by parole. Do you  
21 understand that?

22                THE DEFENDANT: I do.

23                THE COURT: All right. So you understand the charges  
24 against you and the range of punishment that you are facing  
25 with these charges? Is that correct?

11 : 42 1 THE DEFENDANT: I understand.

2 THE COURT: So it's my understanding, Counsel, that we  
3 have no plea agreement of any kind in this case?

4 MS. LEO: That is correct, Your Honor.

11 : 42 5 MR. THOMAS: That's correct.

6 THE COURT: All right. So let me ask you,  
7 Mr. McGavitt, has anyone made any promise or assurance to you  
8 of any kind in an effort to get you to plead guilty in this  
9 case?

11 : 42 10 THE DEFENDANT: No.

11 THE COURT: Has anybody attempted in any way to force  
12 you or to coerce you into pleading guilty?

13 THE DEFENDANT: No.

14 THE COURT: All right. Do you understand that what we  
15 are doing here today with respect to your plea of guilty is  
16 final and that if the sentence that you receive later on at the  
17 sentencing hearing is longer than you expected to receive, you  
18 are not going to be able to come back in here on that basis and  
19 try and withdraw these guilty pleas and start this process over  
20 again? Do you understand that?

21 THE DEFENDANT: I understand.

22 THE COURT: Now, there are a number of factors that  
23 can affect the length of your sentence in this case. One of  
24 those factors is your prior criminal history, if you have one.  
25 Depending upon what crimes you may have committed in the past

11 : 43      1 and when those crimes were committed, that can affect the  
2 length of your sentence in this case. Do you understand that?

3                THE DEFENDANT: I understand that.

4                THE COURT: With respect to the possession of child  
5 pornography, the number of images possessed usually means a  
6 longer sentence. More images, longer sentence. Do you  
7 understand that?

8                THE DEFENDANT: Yes, I do.

9                THE COURT: All right. So if you plead guilty today  
10 and I accept your plea, then your guilt is established and we  
11 move to the sentencing process. This is a summary of what  
12 happens from this point on: The probation department conducts  
13 a presentence investigation, and they prepare a report to  
14 assist me in sentencing. You can contribute to that report by  
15 meeting with probation, along with Mr. Thomas, and providing  
16 them with information. The government does the same thing.  
17 And then you see the presentence report before I do. And you  
18 can object to any errors that you think it contains. The  
19 government can do the same thing. And then the probation  
20 department writes responses about any objections that you have  
21 raised or that the government has raised, and then they send  
22 the entire packet of information to me so that I can review it  
23 prior to the sentencing hearing.

24                And at the sentencing hearing, everyone comes  
25 back to court, just like we are here today, and you and

11 : 44      1 Mr. Thomas will have an opportunity to speak on your behalf  
2 before I determine the sentence in your case. Do you  
3 understand how the process works?

4                THE DEFENDANT: I understand. Yes.

11 : 44      5                THE COURT: Even though I do the sentencing, I do not  
6 know what sentence you are going to receive in this case, but I  
7 will decide all disputed factual and legal issues, and then I  
8 will determine the appropriate sentencing guideline range.  
9 That is the range of months that are recommended under the  
11 : 44      10 advisory guidelines for your sentence. In doing this, I do not  
11 use the beyond a reasonable doubt standard that a criminal jury  
12 uses, and the rules of evidence do not apply, because the  
13 sentencing process is much more informal than a trial.  
14 However, what you need to understand -- and I'm sure what your  
15 attorney has explained to you -- is that in this case, with  
16 respect to Count One, there is a mandatory minimum of 10 years  
17 in federal prison that can go all the way up to a maximum of  
18 life. Do you understand that?

19                THE DEFENDANT: Yes, I do.

11 : 45      20                THE COURT: And with respect to Count Two, it is 15 to  
21 30 years, so there's a mandatory 15-year minimum in that case.  
22 Do you understand that?

23                THE DEFENDANT: Yes, I do.

24                THE COURT: All right. I assume that you have gone  
25 over the sentencing guidelines with Mr. Thomas, and he has

11 : 45 1 explained how they may work in your case. Is that right?

2 THE DEFENDANT: He has, yes.

3 THE COURT: Well, whatever he has told you about the  
4 sentencing guidelines and how they may work in your case, I  
5 want you to understand that's not a promise or a guarantee of  
6 any kind from Mr. Thomas about your sentence. It is simply his  
7 best estimate of what is going to happen in this case, based on  
8 his experience. Do you understand that?

9 THE DEFENDANT: Yes, I do.

11 : 46 10 THE COURT: All right. Let's see now. Before I can  
11 accept a plea of guilty from you, I need to make a  
12 determination that there is a factual basis for your plea of  
13 guilty.

14 Before I get to that, Mr. Thomas, does your  
15 client waive the formal reading of the indictment at this  
16 point?

17 MR. THOMAS: We will so waive, Judge.

18 THE COURT: All right. So, Mr. McGavitt, what I'm  
19 going to do is I'm going to ask Ms. Leo to summarize the facts  
20 that she believes the government can prove about you in this  
21 case. And when she finishes, I'm going to ask you if those  
22 facts are true. Do you understand?

23 THE DEFENDANT: I do.

24 THE COURT: Ms. Leo?

11 : 46 25 MS. LEO: Yes, Your Honor.

11:46 1                   On May 26, 2019, the Washington County Sheriff's  
2 Office in Washington County, Arkansas was dispatched to the  
3 residence belonging to the parents of minor victim number one,  
4 who is a 13-year-old female. Minor victim number one had  
5 advised her parents that she had been involved in an online  
6 relationship with an adult male known as Daniel McGavitt, who  
7 was later identified as the defendant, who she believed resided  
8 in Texas.

11:47 9                   Minor victim one stated that she and McGavitt had  
10 been communicating via Facebook. Minor victim one stated that  
11 McGavitt had requested on several occasions that she send him  
12 nude photographs or videos of herself engaging in sex acts.

11:47 13                  Minor victim one also detailed an occasion in  
14 April of 2019 where McGavitt traveled to Arkansas from Texas  
15 and engaged in sexual intercourse with minor victim one.

16                   Subsequent to the report taken by the Washington  
17 County Sheriff's Office, the information was relayed to the FBI  
18 Little Rock - Fayetteville Resident Agency for further  
19 investigation. FBI Little Rock obtained a search warrant for  
20 three different Facebook accounts, including that of minor  
21 victim one and the profile utilized by McGavitt. Investigators  
22 positively identified George Daniel McGavitt as the owner of  
23 the Facebook profile "Daniel McGavitt." Investigators were  
24 able to further identify McGavitt by placing him less than half  
25 a mile from the residence of minor victim one, located in West

11 : 48      1 Fork, Arkansas, on April 11 of 2019 when a tow truck was  
2 dispatched to remove his truck from a ditch.

11 : 48      3                 On August 13, 2019, Special Agent Guerra was made  
4 aware of the investigation involving minor victim one and  
5 McGavitt. Special Agent Guerra was able to confirm that  
6 McGavitt was residing in the Houston area, more specifically  
7 the Pasadena, Texas and Magnolia, Texas areas.

11 : 48      8                 Special Agent Guerra reviewed the material  
9 provided by Facebook as a result of the search warrant of the  
10 accounts of minor victim one and McGavitt. Special Agent  
11 Guerra observed communications between the account of minor  
12 victim one, and two different accounts belonging to McGavitt.  
13 Special Agent Guerra observed at least three images depicting  
14 minor victim number one that are considered to be child  
15 pornography as defined in Title 18, United States Code,  
16 Section 2256.

11 : 49      17                All three of the images received by McGavitt via  
18 Facebook depict minor victim number one either rubbing her  
19 vagina or minor victim number one inserting her fingers into  
20 her vagina.

21                21 Special Agent Guerra observed at least two  
22 instances where minor victim one advised McGavitt of her age  
23 and where McGavitt acknowledges that minor victim one is, in  
24 fact, under the age of 18. Minor victim one stated in a  
25 private message to McGavitt on May 2nd, 2019, "I don't know,

11:49 1 maybe it's just because I'm pretty tiny for a 14-year-old."

2                   The next day, on May 3rd, 2019, McGavitt stated,  
3 "Let me see your pussy. Open your pussy."

4                   Minor victim one responded a few minutes later by  
5 sending an image depicting a minor female with her hand rubbing  
6 her vagina. Minor victim one has confirmed that all the images  
7 sent to and received by McGavitt were, in fact, images she  
8 produced at his behest.

9                   Later in their communication via Facebook on  
11:49 10 May 15, 2019, McGavitt stated, "I know I'm going to deal with a  
11 lot till you 18, and I'm okay with that, babe."

12                  Special Agent Guerra observed several IP  
13 addresses resolving back to T-Mobile that were used to access  
14 the accounts belonging to McGavitt. All of the IP addresses  
15 observed by Special Agent Guerra resolved back to the Houston,  
16 Texas area, which is located in the Southern District of Texas.

17                  On August 15, 2019, McGavitt was arrested on the  
18 State of Texas charges unrelated to the facts of this  
19 particular case.

11:50 20                  At the time of his arrest, an LG cellular  
21 telephone was found on his person and was taken into evidence.  
22 Said cellular phone was later provided to Special Agent Guerra  
23 by a task force officer assigned to the FBI's Child  
24 Exploitation Task Force.

25                  The LG cellular phone was subsequently identified

11:50 1 as an LG LM-X21OMA, cellular telephone with Serial Number  
2 805CYZP141485.

11:50 3 On August 21, 2019, Special Agent Guerra obtained  
4 a federal search warrant for the phone. Pursuant to the search  
5 warrant, Special Agent Guerra learned the phone number assigned  
6 to the phone was (346) 368-5564.

11:51 7 Special Agent Guerra found several chat  
8 conversations on the device. Special Agent Guerra found child  
9 pornography images and videos depicting minor victim one.  
10 There were a total of 71 images depicting minor victim number  
11 one stored in the device, 16 of which met the federal  
12 definition of child pornography.

13 There were 13 videos depicting minor victim  
14 number one stored on the device. All of the videos meet the  
15 federal definition of child pornography.

11:51 16 One of the videos of minor victim one was found  
17 on the phone depicted the following: One video is 22 seconds  
18 in length, depicting minor victim one, who is 13 years of age,  
19 lying on a bed while completely nude. Minor victim one, whose  
20 face is visible throughout the video, can be seen inserting the  
21 handle of a hairbrush into her vagina. One of the images found  
22 in McGavitt's phone of minor victim one is described as  
23 follows: Minor victim one, who is 13 years of age, is lying on  
24 a bed, wearing only a white bra. Minor victim one, whose face  
25 is visible, can be seen inserting two fingers into her vagina.

5                    Additionally, there was a picture of the pickup  
6 truck McGavitt drove to Arkansas on his phone. The truck was  
7 photographed by the tow service in Arkansas, and the images  
8 appear to be of the same truck.

9                   Additionally, the following contained messages  
10                  sent via Facebook to minor victim one by McGavitt after  
11                  May 29th of 2019, which was the last date captured in the  
12                  search warrant returned for the Facebook warrants. These  
13                  messages are consistent with the earlier chats between McGavitt  
14                  and minor victim one. McGavitt would be or has been charged in  
15                  Arkansas with rape in violation of the Arkansas Code  
16                  Section 5-14-103, which states that a person commits rape if he  
17                  or she engages in sexual intercourse with another person who is  
18                  less than 14 years of age. This is the underlying crime for  
19                  the coercion and the enticement charge. Consent is not a  
20                  defense to this crime under Arkansas law.

21 || The defendant is in his 40s.

22 The Internet was used to facilitate his grooming  
23 of the child, requesting the production of child pornography  
24 and obtaining the images. The Internet is a means and facility  
25 of interstate and foreign commerce.

11 : 53           1 THE COURT: All right. Thank you, Ms. Leo.

2                   2 Mr. McGavitt, you have heard the government's  
3 attorney summarize the facts that she believes the government  
4 can prove about you in this case. Are those facts true?

11 : 53           5 MR. THOMAS: Judge, if I may interject, as to all,  
6 except for the issue where the minor vehicle -- the minor  
7 victim one details the occasion in April where McGavitt  
8 traveled to Arkansas to engage in sexual intercourse, my  
9 understanding is my client acknowledges and admits the  
11 : 53           10 remainder of the facts stated; however, we do dispute that  
11 particular fact.

12                   I do not believe that affects the sufficiency of  
13 his availments to Count One. I just wanted to let the Court  
14 know that that is our position. And I have talked to AUSA Zack  
11 : 54           15 about that, as well.

16                   MS. LEO: Your Honor, in regards to the government's  
17 response to that, the elements deal with the defendant  
18 knowingly persuading, inducing and enticing or coercing or  
19 persuading or -- excuse me -- or attempting to do that, to have  
20 the individual engage in conduct that, had the conduct  
21 occurred, it would be a crime under that state law.

22                   So the government's position is that the sexual  
23 abuse did occur, that there was sexual intercourse, as stated  
24 by minor victim number one. However, if the defendant is  
25 contesting that, that is something that the Court can deal with

11 : 54       1 in regards to the sentencing enhancements at the time of  
2 sentencing, as long as the defendant admits that he is the  
3 individual who attempted -- who persuaded, induced, enticed,  
4 coerced or attempted to persuade, induce, entice and coerce an  
5 individual who was under the age of 18 to engage in some sort  
6 of conduct that, had it occurred, he could be charged with that  
7 crime under the state of Arkansas.

8               MR. THOMAS: That's our understanding, Judge.

9               THE COURT: Is that true, Mr. McGavitt?

11 : 55       10          THE DEFENDANT: Yeah. Uh-huh.

11               11          THE COURT: With that clarification, the Court finds  
12 that there is a factual basis for the plea to all three counts.

13               13          So, Mr. McGavitt, let me ask you at this time,  
14 what is your plea to the charges against you in Counts One, Two  
15 and Three of the indictment? Guilty or not guilty?

16               16          THE DEFENDANT: Guilty.

17               17          THE COURT: Do you state here in court under oath that  
18 each and every allegation in Counts One, Two and Three all are  
19 true and correct and that you are making this plea of guilty  
20 freely and voluntarily?

21               21          THE DEFENDANT: Yes.

22               22          THE COURT: Has anyone forced you, threatened you,  
23 coerced you or done any violence to you or any other person to  
24 get you to plead guilty?

25               25          THE DEFENDANT: No, Your Honor.

THE COURT: Are you pleading guilty because of any promise that's been made to you by anyone?

3 || THE DEFENDANT: No.

4 THE COURT: Are you pleading guilty because you are  
5 guilty?

6 THE DEFENDANT: I am guilty. Yeah.

7 THE COURT: And for no other reason?

8 THE DEFENDANT: Uh-huh.

9                   THE COURT: All right. Mr. Thomas, do you know of any  
10 reason why your client should not plead guilty to these  
11 charges?

12 MR. THOMAS: No, Judge.

13                   THE COURT: Any additional admonishments that you or  
14 Ms. Leo can think of that I need to provide to the defendant at  
15 this time?

16 || MR. THOMAS: Not from the defense.

17 MS. LEO: No, Your Honor.

18 || THE COURT: All right. Thank you.

19                   These are the Court's findings: I find the  
20 defendant is clearly mentally competent and capable of entering  
21 an informed plea. I find that the plea is supported by  
22 independent facts establishing all of the elements of the  
23 offense, each offense in each of the three counts, and that the  
24 defendant intended to do the acts he committed.

25 I find the defendant's plea of guilty is

11 : 56           1 voluntarily, freely and knowingly made and that the defendant  
2 understands the nature of these proceedings and the  
3 consequences of his plea of guilty and that this is an informed  
4 plea. Therefore, I accept your plea of guilty, and I find you  
5 guilty as charged in Counts One, Two and Three of the  
6 indictment.

7                   As I explained before, a presentence  
8 investigation will now be conducted, and a report will be  
9 prepared to assist me in sentencing.

11 : 57           10                  The sentencing hearing in this case is set for  
11 June 4 at 10:45 in this courtroom.

12                  12                  Let's see. I guess that pretty much covers it.  
13 Rhonda does have a copy of the order for presentence  
14 investigation with disclosure and sentencing dates for both  
15 counsel.

16                  16                  Anything else from the government?

17                  17                  MS. LEO: Your Honor, I don't have an order of  
18 forfeiture. Can the government file that with the Court later?

19                  19                  THE COURT: Yes. Certainly.

11 : 57           20                  MS. LEO: Thank you.

21                  21                  THE COURT: And run it by Mr. Thomas.

22                  22                  MS. LEO: Yes, Your Honor.

23                  23                  THE COURT: And if there is no objection, I will sign  
24 it.

25                  25                  Anything else, Mr. Thomas?

1 MR. THOMAS: Nothing from the defense. Thank you.

2 THE COURT: All right. We are adjourned then. Thank  
3 you.

4 *(Court adjourned at 11:57 a.m.)*

5 \* \* \* \*

6 I certify that the foregoing is a correct transcript from  
7 the record of proceedings in the above-entitled cause.

8

9 Date: November 12, 2020

10 */s/ Mayra Malone*  
11 -----  
12 Mayra Malone, CSR, RMR, CRR  
13 Official Court Reporter  
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